FOO LOKE YING & ORS.

v.

TELEVISION BROADCASTS LTD. & ORS.

HIGH COURT MALAYA, IPOH
AJAIB SINGH J
[CIVIL SUIT NO. 1631 OF 1984]
26 DECEMBER 1984

CIVIL PROCEDURE: *Application to strike out statement of claim and ex parte order - Cinematograph films - Whether defendants entitled to copyright - Whether defendants "qualified persons" - Extension of copyright - Whether applicable.*

The plaintiffs filed a writ against the defendants seeking declarations and injunctions against them in respect of cinematograph films. On the same day they obtained an order on an *ex parte* application restraining the defendants from lodging reports with the police, obtaining search warrants, instituting civil proceedings and obtaining Anton Piller orders and generally from in any way harassing the plaintiffs or interfering with their business on the grounds of breach of copyright. The defendants applied for the statement of claim to be struck out and *ex parte* order to be set aside.

Held:
The defendants' claim was untenable.

(a) The provisions of s. 6(1)(a) and s. 2(2)(c) Copyright Act 1969 were not applicable as none of the defendants was a "qualified person" within the provisions of s. 5 of the Act.

(b) Further, no regulation under s.20 of the Act had been made whereby the defendants could claim copyright under the Act.

[Application dismissed.]

Case referred to:
Asia Television Ltd. v. Viwa Video Sdn. Bhd. [1984] 1 CLJ (Rep) 72 (FCCA 215/83)

Legislation referred to:
Copyright Act 1969, ss. 2(2)(c), 4, 5(1), 6(1)(a), 20

For the plaintiffs - N.T. Rajah; M/s. Maxwell, Kenion, Cowdy & Jones
For the defendants - V.L. Kandan; M/s. Shearn Delamore & Co.

JUDGMENT

Ajaib Singh J:

On 20 October 1984 the plaintiffs filed a writ against the defendants seeking declarations and injunctions against them in respect of cinematograph films. On the same day they obtained an order on an *ex parte* application restraining the defendants from lodging reports with the police and obtaining search warrants against the plaintiffs for alleged breach of copyright in video tapes and from instituting civil proceedings and obtaining Anton Piller orders against the plaintiffs and generally from harassing or annoying or interfering with the business conducted by the plaintiffs by alleging breach of copyright.

On 7 November 1984 the defendants applied for an order that the statement of claim of the plaintiffs be struck out and that the *ex parte* order made on 20 October 1984 against them be set aside. This application came up for hearing before me on 13 November 1984 and after hearing Counsel for the parties I dismissed the application with costs on the ground that the defendants were not entitled to any copyright under the Copyright Act 1969.

Copyright for eligible works subsists only by virtue of the Copyright Act 1969. Under s. 4 of the Act works eligible for copyright are:

(1) Subject to the provisions of this section the following works shall be eligible for copyright:

(a) literary works;
(b) musical works;
(c) artistic works;
(d) cinematograph films;
(e) sound recordings;
(f) broadcasts.

(2) A literary, musical or artistic work shall not be eligible for copyright unless:

(a) sufficient effort has been expended on making the work to give it an original character; and

(b) the work has been written down, recorded or otherwise reduced to material form.

(3) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

Copyright is conferred on any work eligible for copyright but only if the author or a joint author is a qualified person as defined in s. 5(1) of the Copyright Act which reads as follows:

Copyright shall be conferred by this section on every work eligible for copyright of which the author or, in the case of a work of joint authorship, any of the authors is, at the time when the work is made, a qualified person, that is to say:

(a) an individual who is a citizen of, or is a permanent resident in, Malaysia; or

(b) a body corporate constituted and vested with legal personality under the laws of Malaysia and established in Malaysia.

The 1st defendant is registered in Hong Kong and it owns cinematograph films which are televised in HongKong. The 2nd and 3rd defendants are the licencees of the 1st defendant. Having published these films in Malaysia through the 2nd and 3rd defendants within 30 days of their first telecast in HongKong the defendants claim that they have copyright on these films in Malaysia by virtue of s. 6 (1) (a) and s. 2 (2) (c) of the Copyright Act 1969. These provisions read as follows:

6(1) Copyright shall be conferred by this section on every work which is eligible for copyright and which:

(a) being a literary, musical or artistic work or cinematograph film is first published in Malaysia;

2.(2) For the purposes of this Act the following provisions shall apply with respect to publication:

(c) a publication in any country shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days.

I am afraid the defendants' claim is untenable. The provisions of s. 6 (1) (a) and s. 2 (2) (c) would be relevant and applicable only if the defendants are qualified persons under s. 5 of the Act. But the fact is that none of the defendants is a qualified person within the provisions of s. 5 of the Copyright Act and therefore not entitled to copyright. Section 20 of the Copyright Act provides that the Minister for commerce and industry may by regulation extend the application of the Copyright Act in respect of any or all of the works eligible for copyright:

(a) to individuals who are citizens of, or permanent residents in,

(b) to bodies corporate constituted and established in or under the laws of,

(c) to works, other than sound recordings and broadcasts, first published in,

(d) to works of architecture erected in, and to other artistic works incorporated in a building located in,

(e) to sound recordings made in,

(f) to broadcasts transmitted from,

a country which is a party to a treaty or a member of any convention or union to which Malaysia is also a party or a member as the case may be and which provides for protection of copyright in works which are protected under this Act.

But no regulation under s. 20 has been made by the Minister whereby the defendants could claim copyright under the Act.

Dato Kandan for the defendants referred to the case of *Asia Television Ltd. v. Viwa Video Sdn. Bhd.* [1984] 1 CLJ (Rep) 72 (FCCA 215/83) in support of his contention that the defendants had copyright on the films in question. The Federal Court in that case however did not consider the applicability of s. 20 of the Copyright Act and its decision was only to the extent that non-compliance with the provisions of the Films (Censorship) Act 1952 would not affect the acquisition of copyright under the Copyright Act. Recently Dr. Zakaria J in KL Civil Suit No. C 1713 of 1984 had the opportunity of considering ss. 5 and 20 of the Copyright Act and he came to the conclusion that unless the Minister extends any provision of the Copyright Act in terms of s. 20 copyright under the Act cannot be claimed by any person or body who is not a qualified person under s. 5 of the Act. I am in complete agreement with the views of Dr. Zakaria J and I accordingly held that the defendants in this case had no copyright. Their application was therefore dismissed with costs.

Also found at [1985] 1 CLJ 97